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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 1289

GARLAND CLAUDE COCHRAN and
JACK DONALD EVANS,
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

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Come now the above named Petitioners and file this their petition for rehearing their petition for writ of certiorari heretofore filed and denied by an Order of this Court entered May 20, 1968.

The petition for writ of certiorari heretofore filed in compliance with the rules of this Court, set forth each of the questions presented and sought to be reviewed by this Court.

The fourth question presented relates to the impact of recent decisions of this Court upon the particular prosecution involved in the present case.

The decisions of this Court referred to are *Albertson* v. *Subversive Activities Control Board,* 382 US 70; *Marchetti* v. *United States,* 390 US 39; *Grosso* v. *United States,* 390 US 62; and *Haynes* v. *United States,* 390 US 85.

The indictment in the present case charges that Petitioners knowingly and wilfully transported, possessed and sold certain distilled spirits which were required to be stamped under the provisions of 26 USC 5205(a)(2), the immediate containers of which did not have affixed thereto stamps evidencing the determination of the tax or indicating compliance with the provisions of Chapter 51, Title 26, United States Code, all in violation of 26 USC 5604(a)(1).

The decisions of this Court referred to above were rendered subsequent to the trial of the present case. The latter three having been rendered on January 29, 1968, were rendered subsequent to the filing of briefs in that case with the United States Circuit Court of Appeals for the Tenth Circuit. Accordingly, the question here urged was not decided by the trial court nor by the Court of Appeals. Under the state of the law existing prior to the decision of the *Marchetti, Grosso* and *Haynes* cases, as observed in the *Grosso* case, the assertion of the Fifth Amendment right relative to self-incrimination would have been unavailing in the trial court. Because of this, in *Grosso,* this Court held that the failure to present this issue in either the trial or the appellate court did not constitute an effective waiver of the Constitutional privilege.

There are literally hundreds of cases involving this question as it relates to the distilled spirits statutes now

pending in various courts throughout the United States. The application of the cited cases to the distilled spirits tax statutes presents an important question of Federal law of gravity and substantial significance in the administration of criminal justice which should be settled by this Court at the earliest possible date.

It is submitted that the possession and sale or the transfer of tax unpaid spirits is closely related to, if not indistinguishable from, the possession of the unregistered firearm in the *Haynes* case. As pointed out earlier, in order to acquire and place the stamps required by the Internal Revenue Laws on containers of whiskey, it is essential that there be involved in the production of the spirits a registered distillery and that the bond required by statute be first posted. 26 USC 5171, 5173, and 5179. In such cases, the tax is paid on the basis of a return which must be filed, 26 USC 5061, and the stamps are issued under the regulations of the Secretary. 26 USC 5205(3). Yet, the registration of a distillery, the giving of bond, the filing of a distilled spirits tax return, the acquisition of stamps or the payment of the tax, imposes upon the person so affected a duty to incriminate themselves under both state and federal law, whether such acts are performed by them, directly or indirectly. 18 USC 2, 4.

In order that this important question might be settled and that the federal trial and appellate courts throughout the nation might have the benefit of a uniform rule to apply, it is important that the issues hereby raised be settled at the earliest possible date. Settlement of the issues at this time, by this Court, or by remand of this case to the Court of Appeals, would eliminate substantial litigation and would effect a more speedy administration of justice uniformly throughout the United States.

Wherefore, Petitioners most respectfully petition the Court to rehear their petition for the writ of certiorari, to grant the same and to either determine this important question in the administration of criminal justice or remand the case to the United States Court of Appeals to the Tenth Circuit for that purpose.

Respectfully submitted,

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ROBERT B. THOMPSON

CERTIFICATE

The undersigned counsel does hereby certify that the within petition for rehearing is presented in good faith and not for delay. Counsel further certifies that the petition is confined to intervening circumstances of substantial or controlling effect.

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ROBERT B. THOMPSON

CERTIFICATE OF SERVICE

The undersigned does hereby certify that true copies of the foregoing petition for rehearing of Garland Claude Cochran and Jack Donald Evans were deposited in the United States Post Office with air-mail postage prepaid, addressed to the Solicitor General of the United States, Department of Justice, Washington, D. C.; Lawrence M. Henry, Esquire, United States Attorney, and Richard T. Spriggs, Assistant United States Attorney for the District of Colorado, Federal Building, Denver, Colorado.

This the 12th day of June, 1968.

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ROBERT B. THOMPSON